

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 3 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA :****HONOURABLE MR.JUSTICE KS JHAVERI :**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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KAUSHIK RASIBHAI PATEL - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

THROUGH JAIL for Appellant(s) : 1, MS RV ACHARYA for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**and****HONOURABLE MR.JUSTICE KS JHAVERI****Date : 11/09/2007**

ORAL JUDGMENT**(Per : HONOURABLE MR. JUSTICE KS JHAVERI)**

1.0 By way of this appeal, the appellant has prayed to quash and set aside the judgment and order dated 18th December, 1998 passed by the learned Sessions Judge, Ahmedabad [Rural] in Sessions Case No. 25 of 1998 whereby, the appellant was convicted for the offences punishable u/s. 457, 397 & 302 of the Indian Penal Code, 1860 [for short, "the I.P.C."]. For the offences punishable u/s. 457 & 397, the appellant was sentenced to undergo Rigorous Imprisonment for a period of Ten years with fine of Rs.3,000/- and in default of payment of fine, Rigorous Imprisonment for a further period of Two years. For the offence punishable u/s. 302, the appellant was sentenced to undergo Rigorous Imprisonment for life. The substantive sentences with respect to all the aforesaid offences were ordered to run concurrently. The appellant was also given the benefit of set-off.

2.0 The facts in a nutshell are as under;

2.1 On 10th October, 1997, at around midnight

hours, the appellant, with an intention to commit theft of valuable articles, entered the residential house of one Ranchodbhai Nathabhai Patel - the complainant herein, situated in Ranip area of Ahmedabad City. At that time, only the son and mother of the complainant, aged about 4 & 70 years respectively, were present in the house, since the complainant and his wife had gone out to view the 'Garba' festival in their society. At around 1.00 a.m., the wife of the complainant returned home to collect some dishes for the purpose of serving food amongst the 'Garba' enthusiasts. However, the door of the house was neither opened by her son nor her mother-in-law in spite of repeated calls. Therefore, she returned back to the place where the 'Garba' was going on and informed the complainant about the same. Thereafter, the complainant, his wife and one Bharatbhai Bhikhabhai Patel reached the house. When no response was given to the calls of the complainant, the complainant, along with several other persons, forcibly opened the door. On entering the house, he noticed that his son was sleeping while his mother was lying dead on the cot in a pool of blood.

2.2 On switching on the lights, they noticed that the key of the cupboard was missing and that gold & silver ornaments and cash kept in the treasury box were also missing. A huge crowd gathered at the said place and the police authority of Sabarmati Police Station was telephonically informed about the said incident. The police authority reached the place of incident and made necessary preliminary enquiry. A complaint of the son of the deceased was recorded, which was sent along with the report for registering the offence. On receipt of the same, the PSO of Sabarmati Police Station registered the complaint as I - C. R. No. 213 of 1997 for offences punishable u/s. 397 and 302 of the I.P.C.. Inquest 'Panchnama' was performed in the presence of 'Panchas'. 'Marnottar' form was filled up and a 'yaadi' was sent for making necessary arrangements to conduct post-mortem of the dead body of the deceased. Thereafter, the dead body was sent for the purpose of conducting post-mortem. Thereafter, 'Panchanama' of the scene of offence was done and 'muddamal' articles were also collected.

2.3 Further investigation was carried out and statements of witnesses were recorded. The nephew of the complainant – the appellant herein, who was also present in the house at the relevant point of time, was arrested on preliminary enquiry and as fresh blood stains were visible on his clothes. Arrest 'Panchnama' was prepared and the clothes worn by the appellant were also seized.

2.4 During the course of interrogation, the appellant showed his willingness to produce the stolen articles as well as the weapon used in the commission of the offence in question. Therefore, the Investigation Officer prepared a primary 'Panchnama' to that effect in the presence of 'Panchas'. Thereafter, the Investigating Office, the 'Panchas' and the appellant went to the place where the articles in question were hidden by the appellant in a police vehicle as per the direction shown by the appellant. After reaching the said place, the articles were seized by way of a separate 'Panchnama'. Thereafter, the 'muddamal' knife, the clothes worn by the appellant as well as by the deceased at the relevant point of time and

the 'muddamal' articles viz. bed-sheets, the portion of the mattress having blood stains, etc. were sent to the F.S.L. for examination. On receipt of the F.S.L. Report, PM note and the Medical Report, the same were kept in the investigation file.

2.5 On completion of investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate, First Class at Mirzapur. Since the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Mirzapur committed the case to the Sessions Court, Ahmedabad [Rural] and the same was numbered as Sessions Case No. 25 of 1998. Since the appellant pleaded not guilty to the said charge, trial was conducted.

3.0 The prosecution has examined in all nine witnesses to prove the guilt against the appellant. PW - 1 Ranchodbhai Nathabhai Patel at Exhibit - 8, PW - 2 Devshankar Ganpatram Raval at Exhibit - 9, PW - 3 Popatbhai Ramanlal at Exhibit - 12, PW - 4 Amrishbhai Punjabhai at Exhibit - 13, PW - 5 Arunkumar Ramniklal

Vyas at Exhibit - 16, PW - 6 Krishnakant Chandrabhan Sharma at Exhibit - 17, PW - 7 Ramilaben Vipulkumar Parikh at Exhibit - 21, PW - 8 Natvarsinh Deepsinhji Dodia at Exhibit - 31 and PW - 9 Dr. Dingat Kalidas Dixit at Exhibit - 35.

3.1 The prosecution has relied upon several documentary evidences and, more particularly, the evidences in the form of complaint at Exhibit - 33, 'Panchnama' of the scene of offence at Exhibit - 11, Inquest 'Panchnama' at Exhibit - 10, the Letters at Exhibits - 22 & 23 and the PM Notes at Exhibit - 26.

3.2 On submission of the closing 'purshis', the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Sessions Judge passed the impugned judgment and order and convicted the appellant for the offences and imposed sentences as narrated in the earlier part of this judgment. Hence, the present appeal.

4.0 Mr. G. Ramakrishnan learned Advocate appearing on behalf of Ms. R. V. Acharya for the appellant has submitted that the prosecution has failed to establish the charge against the appellant beyond reasonable doubt. He has contented that the appellant was one of the close relatives of the deceased and, therefore, his presence in the house of the complainant at the relevant point of time was natural. He has submitted that the blood stains found on the clothes of the appellant also cannot connect him with the crime in question since the deceased was one of her nearest relatives. He has submitted that except the above, there is no other evidence on record to connect the appellant with the crime in question.

4.1 Learned Advocate has contented that the prosecution case suffers from many infirmities inasmuch as no separate 'Panchnama' was done while seizing the clothes worn by the appellant at the relevant point of time. He has submitted that the clothes in question were seized under the arrest 'Panchnama' only and, therefore, the same could not be believed to be true.

4.2 Learned Advocate has further contented that the Investigating Officer himself has stated in his evidence that the statements of two 'Panch' witnesses of the 'Panchnama' of the scene of offence at Exhibit - 11 have not been recorded since they were not traceable and, therefore, the 'Panchnama' at Exhibit - 34 cannot be believed to be true. In that view of the matter, it cannot be said that the prosecution has proved beyond doubt the guilt against the appellant.

4.3 Learned Advocate for the appellant has further submitted that the letters in question at Exhibits 22 & 23, on which reliance has been placed by the prosecution, were not written by the appellant himself. He has contented that even if the said letters are believed to be written by the appellant, then also it cannot be said that the appellant has made the so-called extra-judicial confessions as alleged by the prosecution. He has, therefore, submitted that the learned Sessions Judge has committed serious error in convicting the appellant for the offence in question.

5.0 Mr. K. P. Raval learned APP has vehemently opposed to the grant of this Appeal. He has submitted that during the course of interrogation of the appellant, the appellant had showed his willingness to produce the stolen articles as well as the knife used in the commission of the offence in question. He has submitted that the Investigating Officer prepared a 'Panchnama' in respect of the said confession made by the appellant in the presence of 'Panchas' and, thereafter, the Investigating Officer, the 'Panchas' and the appellant had gone to the said place in a police vehicle as per the direction shown by the appellant and on discovery of the 'muddamal' articles and weapon - knife, the same were seized by way of a separate 'Panchnama' at Exhibit - 27. He has submitted that the said 'muddamal' articles have also been identified by the complainant to be of his ownership. Thus, the aforesaid fact clearly go to show that the appellant had committed the crime in question.

5.1 Learned APP has submitted that the blood stains found from the clothes of the appellant is similar to the Blood Group of the deceased, which is proved from the

F.S.L. Report. He has submitted that from the deposition of PW – 7, it is evident that the letters at Exhibits – 22 & 23 were written by the appellant himself. Hence, the extra-judicial confessions made by the appellant, in the form of these two letters, are free from all doubts and requires no corroboration. He has, therefore, submitted that the Court below was completely justified in convicting the appellant for the offence in question.

6.0 Heard learned counsel for the respective parties. Having gone through the oral as well as documentary evidence on record, this appears to be a case where there is no direct evidence to connect the accused - appellant with the alleged offence in question. The entire case of the prosecution rests on circumstantial evidence. Thus, all the circumstances brought out by the prosecution must inevitably and exclusively point to the guilt of the appellant and there should be no circumstance which may reasonably be considered consistent with his innocence.

7.0 The prosecution has examined the son of the deceased as PW – 1 at Exhibit 8. In his deposition, he has

deposed that on 10.10.1997 at around 11.00 p.m., his deceased - mother woke him and his wife and asked them to offer prayers at the 'Garba' festival as the said day was the last day of the festival. Accordingly, he and his wife went to the place where the 'Garba' festival was going on. However, sometime later, the wife of PW - 1 returned home so as to collect some dishes for serving eatables amongst the 'Garba' enthusiasts. At that time, since the door of their house was not opened by the deceased in spite of repeated calls, she returned to the place of 'Garba' and informed PW - 1 about the same. Thereafter, they went to their home and knocked the door frequently and also made repeated calls. On hearing the calls, the residents of the nearby plots assembled at the house of PW - 1. Thereafter, the door of the house was forcibly open by around 2 - 3 persons. On entering the house, it was noticed that the deceased was lying dead on a cot in a pool of blood. PW - 1 has further deposed that in the adjoining room, he noticed that the gold & silver ornaments as well as cash kept in the treasury box were missing and that the back side door of the house was also open.

7.1 The complaint filed by PW - 1 is at Exhibit - 33. On a perusal of the same, it clearly transpires that the averments made therein are clearly supported by the statements made by him in his deposition. Nothing incriminating has come on record in his cross-examination which may lead us to believe the evidence led by this witness to be untrue.

8.0 PW - 2 at Exhibit - 9 is the 'Panch' witness of the 'Panchnama' of the scene of offence at Exhibit - 11. The evidence of this witness corroborates the evidence led by PW - 1 so far as it relates to the aspects of the alleged incident of theft and murder. Thus, it could be said that the evidence led by PW - 1 at Exhibit - 8 and the averments made by him in the complaint at Exhibit - 33 have got sufficient corroboration from the evidence led by PW - 2 to the extent of the alleged incident of theft and murder. We find no reasons to disbelieve the evidence led by this witness. Nothing contradictory has come on record in the cross-examination of this witness which may weaken the prosecution case.

9.0 The prosecution has also relied upon the two letters at Exhibits - 22 & 23 allegedly written by the appellant from the jail to his Aunt. The same has been proved by the prosecution by way of examining the Aunt of the appellant, who has been examined as PW - 7 at Exhibit - 21. In her cross-examination, nothing incriminating has come out, which may lead us to believe her deposition to be untrue.

10.0 The prosecution has also examined the Jailor of Sabarmati Central Jail, Ahmedabad who has deposed as PW - 5 at Exhibit - 16. This witness was discharging his duties when the said two letters at Exhibits 22 & 23, allegedly written by the appellant to PW - 7, came before him for necessary procedure before its dispatch. In his deposition, this witness has deposed that the said two letters were stamped as 'censored' and signed by him, as on reading the same before dispatching it, which is the procedure prescribed by law, he found nothing in its contents, which was against the Central Government, State Government or the Jail Authority and, accordingly,

cleared the said two letters for dispatch.

11.0 Thus, from the evidences of PW – 5 & PW – 7, the prosecution has been able to prove that the said two letters at Exhibits 22 & 23 have been voluntarily written by the appellant from the jail to his Aunt and, therefore, the same could be considered as extra-judicial confessional statements made by the appellant from Sabarmati Central Jail, Ahmedabad.

12.0 The prosecution has examined PW – 3 & PW – 4 in order to prove the 'Panchnama' of the discovery of stolen articles and the 'mudammal' weapon – knife. However, both these witnesses were declared to be hostile by the Court below. The Investigating Officer has been examined as PW – 8 at Exhibit – 31. In his deposition, the said witness has deposed that during the course of interrogation of the appellant, the appellant showed his willingness to produce the stolen articles as well as the knife and, therefore, he prepared a 'Panchnama' to that effect in the presence of 'Panchas'. He has further deposed that, thereafter, the 'Panchas', appellant and he

himself went to the place in a Jeep where the said articles & knife were hidden by the appellant. On reaching the said place, the appellant himself produced the said articles and the same were seized by him by way of a separate 'Panchnama' at Exhibit - 32.

12.1 Thus, from the above discussion, it is clear that the prosecution has been able to prove the discovery of the weapon as also the 'muddamal' articles, which were hidden at a place only known & accessible to the appellant and which have been recovered by way of discovery 'Panchnama' at Exhibit - 27. So, from the evidence on record as discussed hereinabove, the prosecution has been able to prove beyond doubt the guilt against the appellant.

13.0 The case of the appellant is that the evidence led by PW - 8 cannot be relied upon and believed to be true since PW - 3 & PW - 4 who are 'Panch' witnesses to the discovery 'Panchnama' at Exhibit - 32 have turned hostile and that PW - 8 himself is a Police Officer. It may be noted that the gold & silver ornaments seized vide

discovery 'Panchnama' at Exhibit - 32 have been identified by PW - 1 to be of his ownership and that the same were stolen from his house on the day of incident. Moreover, the recovery of the stolen articles and the 'muddamal' knife used in the commission of the alleged offence. In our opinion, the evidence of this witness cannot be ignored on the ground that the 'Panch' witnesses to the discovery 'Panchnama' at Exhibit - 32 had turned hostile and that this witness was a Police Officer. We believe the evidence led by this witness to be fully reliable and trustworthy.

14.0 So as to prove the aspect of homicidal death, the prosecution has relied upon the PM Notes at Exhibit - 26 and the deposition of the Doctor as PW - 9 at Exhibit - 35, who has performed the Post-mortem on the body of the deceased. In his deposition, he has categorically stated that all the injuries were anti-mortem and that they were possible by the infliction of sharp and pointed weapon, except the injury no. 12, which could be possible by the pressure given by a rope. In his cross-examination, this witness has specifically stated that he could definitely opine that the death was caused on account of asphyxia

as a result of strangulation. From the evidence of this witness as well as the PM Notes at Exhibit - 26, it is established beyond doubt that the deceased died a homicidal death. Thus, the medical evidence on record also supports the case of the prosecution.

15.0 Considering the facts and circumstances of the case, we are of the opinion that the prosecution has cogently established the circumstances on the basis of which the inference of guilt could be drawn against the appellant. All the circumstances point towards the guilt of the appellant without any reasons of doubt and lead us to the conclusion that within all human probability, the offence was committed by the appellant and none else. We are in complete agreement with the reasonings given by and the findings arrived at in the impugned judgment and order and, therefore, find no reasons to interfere with the same. Hence, the appeal deserves to be dismissed.

16.0 For the foregoing reasons, the appeal is dismissed. The impugned judgment and order dated 18th December, 1998 passed by the learned Sessions Judge,

Ahmedabad [Rural] in Sessions Case No. 25 of 1998 is confirmed.

[R. P. Dholakia, J.]

[K. S. Jhaveri, J.]

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